



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2014-0242; FRL-9916-27-Region 5]

**Approval and Promulgation of Air Quality Implementation Plans;
Wisconsin; Approval of Revision to PSD Program**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Wisconsin State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) to EPA on March 12, 2014, for parallel processing. On August 11, 2014, WDNR submitted an updated submittal with the final rules. The submittal modifies Wisconsin's Prevention of Significant Deterioration (PSD) program to identify precursors for particulate matter of less than 2.5 micrometers (PM_{2.5}), includes the significant emissions rates for PM_{2.5} and emissions of particulate matter of less than 10 micrometers (PM₁₀), and modifies the definition of PM_{2.5} and PM₁₀ to include emissions that may condense to form particulate matter in permitting decisions. WDNR requested this revision to address disapprovals of two submissions meant to address requirements of the 2008 Implementation of the New Source Review (NSR) Program for PM_{2.5} and to address a partial disapproval under

section 110 of the Clean Air Act (CAA) of what is commonly referred to as an "infrastructure" SIP. EPA is taking final action to approve Wisconsin's August 11, 2014, final SIP revision because the Agency has made the determination that this SIP revision is in accordance with the CAA and applicable EPA regulations regarding PSD. The proposed rulemaking was published June 30, 2014. During the comment period which ended July 30, 2014, no comments were received.

DATES: This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2014-0242. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday

through Friday, excluding Federal holidays. We recommend that you telephone Andrea Morgan, Environmental Engineer, at (312) 353-6058 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andrea Morgan, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6058, morgan.andrea@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. What Comments Were Received on the Proposed Rule?
- III. What Action Is EPA Taking?
- IV. Statutory and Executive Order Reviews.

I. Background

This final rulemaking addresses the March 12, 2014, WDNR submittal for parallel processing, supplemented on April 15, 2014, revising the rules in the Wisconsin SIP to comply with the 2008 NSR Implementation Rule for PM_{2.5} (2008 PM_{2.5} NSR Rule) and to address two previous EPA disapprovals. WDNR supplemented its initial submittal for parallel processing with the final version of its rule on August 11, 2014. The original submission for

parallel processing, and the supplements thereto, may be found in the docket for this action. EPA proposed approval of this revision to Wisconsin's SIP on June 30, 2014 (79 FR 36689).

WDNR's submittal includes the required PSD elements of the 2008 PM_{2.5} NSR Rule including the identification of precursors for PM_{2.5}, the significant emissions rates for PM_{2.5} and the requirement to include emissions which may condense to form particulate matter at ambient temperatures, known as condensables, in permitting decisions. EPA had previously finalized disapprovals of two Wisconsin SIP submissions pertaining to PM_{2.5} NSR implementation. Specifically, on October 29, 2012, EPA finalized disapproval of Wisconsin's infrastructure SIP submittal (77 FR 65478) and on July 25, 2013, EPA finalized disapproval of Wisconsin's May 12, 2011, submittal (78 FR 44881), which included revisions intended to comply with the 2008 PM_{2.5} NSR Rule. EPA disapproved these submittals on the bases that they did not explicitly identify precursors to PM_{2.5} and did not include the required language regarding condensables as required by the 2008 PM_{2.5} NSR Rule and section 110(a)(2)(C) of the CAA. As discussed in the June 30, 2014, proposed approval, EPA has found Wisconsin's March 12, 2014, submittal to contain all of the required elements and to address the previously identified deficiencies.

Although the 2008 PM_{2.5} NSR Rule also codified requirements for PM_{2.5} in the Nonattainment NSR (NNSR) program, there are currently no areas designated as nonattainment for PM_{2.5} located in Wisconsin. As such, Wisconsin is no longer obligated to submit a NNSR plan for PM_{2.5}, and there is no longer a Federal Implementation Plan (FIP) obligation for NNSR. As discussed in the June 30, proposed approval, should an area be designated as nonattainment for PM_{2.5}, Wisconsin will be required to revise its rules to include a plan to address PM_{2.5} in NNSR.

EPA's June 30, 2014, proposed approval was contingent upon Wisconsin providing a final SIP revision that was substantively the same as the March 12, 2014, submittal for parallel processing. Wisconsin provided its final SIP submittal on August 11, 2014, which included the final rules adopted by WDNR on August 1, 2014. There was a typographical error in Wisconsin's August 11, 2014, SIP submittal in which Wisconsin incorrectly identified the rule number of one revision WDNR requested EPA to approve. In a letter dated August 18, 2014, Wisconsin acknowledged that in the August 11, 2014, submittal it incorrectly requested approval of NR 404.02(27)(a)5m and clarified that it intended to request that EPA approve NR 405.02(27)(a)5m, which aligns with the provisions that EPA proposed approval of on June 30, 2014. There were no

differences between the March 12, 2014, draft SIP revision, and the August 11, 2014, final SIP revision.

II. What Comments Were Received on the Proposed Rule?

EPA provided a 30-day review and comment period. The comment period closed on July 30, 2014. EPA received no comments on the proposed action.

III. What Action Is EPA Taking?

EPA is taking final action to approve revisions to Wisconsin rules NR 400 and 405. As explained in the June 30, 2014, proposed approval EPA finds WDNR's submittal to be consistent with the CAA and applicable Federal requirements. WDNR's March 12, 2014, submittal requests that EPA approve the following revised rules into Wisconsin's SIP: (1) NR 400.02(123m) and (124); (2) NR 405.02(21)(b)5.a. and b. and 6; (3) NR 405.02(25i)(a), (ag) and (ar); (4) 405.02(27)(a)5m; and (5) NR 408.02(20)(e) 5.a and b. and 6. At this time EPA is only taking action on the portions that pertain to the identification of precursors to PM_{2.5} and identification of PM_{2.5} and PM₁₀ condensables. Specifically, today's rulemaking is limited to the following provisions: (1) NR 400.02(123m) and (124); (2) NR 405.02(25i)(ag); (3) NR 405.02(25i)(ar)2. and 3.; and, (4) 405.02(27)(a)5m. EPA proposed approval of the remainder of WDNR's submission as it pertains to NO_x as a precursor to ozone

and the definition of major modification in a May 2, 2014 proposed approval (79 FR 25063), and will take a final action on those revisions in a separate rulemaking.

With the final approval of this SIP revisions, the FIP clocks started by EPA's October 29, 2012, narrow disapproval and July 25, 2013, disapproval will stop.

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 30 days**

after publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: August 25, 2014.

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2570 is amended by adding paragraph (c)(132) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(132) On March 12, 2014, April 15, 2014 and August 11, 2014, the Wisconsin Department of Natural Resources submitted a request to revise Wisconsin's air permitting program to incorporate PSD requirements for PM_{2.5}.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, NR 400.02 Definitions. NR 400.0(123m) and NR 400.0(124) as published in the Wisconsin Administrative Register July 2014, No. 703, effective August 1, 2014.

(B) Wisconsin Administrative Code, NR 405.02 Definitions. NR 405.02(25i)(ag), NR 405.02(25i)(ar)2 and 3, as published in the Wisconsin Administrative Register July 2014, No. 703, effective August 1, 2014.

(C) Wisconsin Administrative Code, NR 405.02 Definitions.

NR 405.02(27)(a)5m as published in the Wisconsin Administrative Register November 2010, No. 659, effective December 1, 2010.

[FR Doc. 2014-24174 Filed 10/15/2014 at 8:45 am; Publication Date: 10/16/2014]